



455 Capitol Mall Suite 350
Sacramento CA 95814
Tel· 916.441.6575
Fax· 916.441.6553

DOCKET 09-AFC-8

DATE	<u>JAN 22 2010</u>
------	--------------------

RECD.	<u>JAN 22 2010</u>
-------	--------------------

January 22, 2010

California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **GENESIS SOLAR, LLC REPLY BRIEF IN SUPPORT OF
COMMITTEE SCOPING ORDER
DOCKET NO. (09-AFC-8)**

Enclosed for filing with the California Energy Commission is the original copy of **GENESIS SOLAR, LLC REPLY BRIEF IN SUPPORT OF COMMITTEE SCOPING ORDER**, for the Genesis Solar Energy Project (09-AFC-8).

Sincerely,

A handwritten signature in cursive script that reads "Marie Mills".

Marie Mills

Scott A. Galati
Robert Gladden
GALATIBLEK, LLP
455 Capitol Mall, Suite 350
Sacramento, CA 95814
(916) 441-6575

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
Genesis Solar Energy Project

DOCKET NO. 09-AFC-8

**GENESIS SOLAR, LLC REPLY
BRIEF IN SUPPORT OF COMMITTEE
SCOPING ORDER**

Genesis Solar, LLC hereby files this Reply Brief in support of its Motion for Scoping Order for processing of the Genesis Solar Energy Project (GSEP). This Reply Brief provides specific responses to the Opening Briefs filed by CURE and the Staff and addresses a recent letter from the Executive Director of the State Water Resources Control Board (SWRCB) dated January 20, 2010, attached. This letter was received by Genesis on January 21, 2010.

For summary purposes, Genesis lists the questions the Committee ordered the parties to brief.

1. What is the Commission's Policy on use of water for power plant cooling purposes?
2. What is the legal affect of the US Bureau of Reclamation's Accounting Surface Methodology on groundwater pumping in the Chuckwalla Valley Groundwater Basin?
3. What is the legal standard for including future projects in the cumulative impact analysis under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA)?
4. Does the Commission have a policy of conserving water for use by projects that are not yet identified?

Neither Staff nor CURE answers the Committee's questions.

I. Genesis requests the Committee define the applicable law and standards and does not request the Committee adjudicate facts nor answer the ultimate question of whether the FWEP can use the degraded groundwater in the Chuckwalla Valley Basin for cooling and other purposes.

CURE's Opening Brief carries one major theme and fails to answer the Committee's questions; CURE believes that evidentiary hearings must be held to answer the Committee's questions. CURE fails to acknowledge that Genesis is not requesting the Committee determine the ultimate facts of whether the GSEP can use the degraded water in the Chuckwalla Valley Basin for cooling and other purposes. As the Committee stated in its Order, such a determination is beyond the scope of Genesis' Motion and the requested Scoping Order. Rather, Genesis is requesting the Committee to articulate the legal standards by which the project will be evaluated and provide meaningful definitions and guidance to ensure the law and standards can be appropriately applied. This request is reasonable and although CURE believes the standards are clear, it fails to define any of the elements of the rules and standards it believes should be applied the GSEP. The Committee should reject CURE's assertion that evidentiary hearings are necessary to issue a Scoping Order:

II. The Commission's Water Policy adopted in the 2003 IEPR restates existing state water law and policy and in particular restates SWRCB Policy 75-58 and therefore the Commission's Water Policy must be applied consistent with SWRCB Policy 75-58.

CURE and Staff agree in their Opening Briefs that the Commission's Water Policy is based upon and incorporates SWRCB Policy 75-58.¹ Further, CURE correctly identifies that the "Water Code Section 13146 requires *all* state agencies, including the CEC, to comply with all State Board Water Quality Control Policies, including Resolution 75-58, "unless otherwise directed or authorized by statute."² We agree that the Commission must comply with SWRCB Policies, including 75-58. As identified in our Opening Brief it is clear that the Commission did not make any new water policy or law as it lacked the statutory authority to do so, but rather as articulated in the BEP II Decision,

The Commission views Section 5 of the 2003 IEPR as a restatement of *existing* State water policy. We did not create new, substantive water policy in the 2003 IEPR.³

On November 23, 2010 the Executive Director of the Commission sent the attached letter to the Executive Director of the State Water Resources Control Board seeking clarification on the application of SWRCB Policies on the use of water for renewable energy projects for industrial purposes including mirror washing, steam generation, construction and

¹ Staff Opening Brief, page. 2, CURE Opening Brief, page 5.

² CURE Opening Brief page 6.

³ Blythe Energy Project Phase II (02-AFC-1) Commission Decision, Page 248

temporary dust control and cooling. The letter was not docketed and Genesis was unaware of the request until supplied by Staff on January 21, 2010 upon request.

On January 20, 2010 the Executive Director responded to Staff's inquiries and stated the following,

As official state policies for water quality control, State Water Board Resolutions 75-58 and 88-63 are binding on all state agencies unless the Legislature provides otherwise. (Water Code, § 13146.)⁴

No party disputes this correct application of water law. Therefore, in accordance with Water Code Section 13146 and SWRCB direction, the Commission is bound by SWRCB Policy 75-58 and 88-63.

III. SWRCB Policy 75-58's restriction on the use of fresh water for cooling specifically does not apply to groundwater and SWRCB Policy 88-63 as applied to power plant cooling, if applicable at all, only applies to surface water.

When specifically asked by Staff to interpret the application of its own policies to renewable energy projects, the SWRCB stated that SWRCB Policy **does not apply to groundwater** and when applying the policy to **surface water** use, the Commission should consider the Board Policy 88-63's goal of protecting waters that may suitable, or potentially suitable, for future potable uses. Specifically, the SWRCB stated,

More specifically, your questions relate to Resolution 75-58's definitions of "brackish waters" and "fresh inland waters" and Resolution 88-63's treatment of "sources of drinking water." "Brackish waters" is defined by Resolution 75-58 as "waters with a salinity range of 1,000 to 30,000 mg/l and a chloride range of 250 to 12,000 mg/l." (State Water Board Resolution 75-58, p. 2.) "Fresh inland waters" is defined by Resolution 75-58 as "those inland waters which are suitable for use as a source of domestic, municipal, or agricultural water supply and which provide habitat for fish and wildlife." (Ibid.) **As a general matter, that means "fresh inland waters" for purposes of Resolution 75-58 does not extend to groundwater**, which typically does not provide fish and wildlife habitat. On the other hand, State Water Board Resolution 88-63 generally provides that all surface waters and ground waters with a TDS of 3,000 mg/L or less shall be considered to be suitable for municipal or domestic water supply.

The Commission's primary issue revolves around whether brackish water with a TDS of between 1,000 and 3,000 mg/L should be considered to be fresh inland waters in the context of Resolution 75-58's Principle No. 2. The answer is typically yes for surface waters and **no for ground waters**. Due to the State Water Board's subsequent adoption of Resolution 88-63, which establishes the threshold of 3,000 mg/L for suitability, or potential suitability,

⁴ SWRCB Letter, page 2

for domestic or municipal water supply, surface waters that support fish and wildlife habitat and have a concentration of 3,000 mg/L or less should be considered to be “fresh inland waters” for the purposes of Resolution 75-58’s Principle No. 2. As a result, such waters should only be used for these renewable energy projects upon a demonstration that the use of other water supplies or methods of cooling would be “environmentally undesirable” or “economically unsound.” ***With respect to ground waters, they would not be considered “fresh inland waters” because they do not provide habitat for fish and wildlife. (Emphasis added.)***⁵

Therefore, for purposes of State Water Policy as incorporated into the Commission’s 2003 IEPR Water Policy, the use of groundwater complies with the policy because it is not a use prohibited or restricted by either SWRCB Policy 75-58 or 88-63. For purposes of complying with the Commission’s 2003 IEPR Water Policy, the Staff need perform no additional analysis beyond what is articulated in the SWRCB letter and Genesis requests the Committee include such direction in a Scoping Order.

IV. No party has produced any legal reference that would support application of the Accounting Surface Methodology to the use of groundwater in the Chuckwalla Valley Basin and therefore it is not a LORS that should be applied by the Commission for any purpose.

As articulated in our Opening Brief, the Bureau has not adopted a policy by which it can regulate California groundwater in the Chuckwalla Valley Basin as use of Colorado River Water. An Accounting Surface Methodology has been proposed but the law that would make that method applicable has been withdrawn. Those facts are not disputed by Staff or CURE. The party asserting that a law should be applicable to the GSEP has the burden of producing that law. Neither Staff nor CURE can do so because no such law exists. As articulated in our Opening Brief, the Commission has decided this issue on two occasions and since that time there is even greater evidence that the Accounting Surface Methodology is not a LORS that should apply to the GSEP or any project. Staff relies on personal communications and emails for which there has been no Record of Conversation docketed and absent a showing that the Bureau has enacted a law with specific applicable legal requirements, the Committee should Order Staff, that until that policy becomes law, it should not be applied to any project.

V The Committee should adopt Genesis’ definition of projects that should be included in a cumulative impact analysis because it reflects the current status of CEQA and NEPA requirements.

Staff’s Opening Brief supports Genesis’ contention that in order for a project to be included in a cumulative impact analysis, it must be sufficiently defined and reasonably foreseeable and probable. Staff believes that Genesis contends that in order to meet that definition, projects must have “passed certain regulatory hurdles”. On the contrary, Genesis does

⁵ SWRCB Letter, page 3.

not define reasonably foreseeable project that have obtained approvals but rather provides a clear and concise definition before such approvals are obtained. Mainly the filing of a complete application and the beginning of environmental review. These milestones are well before regulatory approvals. Staff cites similar case law supporting that a project must be defined sufficient enough to allow meaningful analysis. If a project has not filed an application or has not begun environmental review, how can one determine how much water it is proposing to use, or where it would be located, or how much land it might disturb, or when it might be constructed? Genesis proposed a definition that would provide sufficient information to distinguish those projects that might be “planned” from those that are sufficiently advanced to allow meaningful consideration and evaluation.

Similarly, Staff believes it can and should rely on Planning Documents for future projects. Use of such documents may be informative, but a mere plan is purely speculative unless formally adopted and provides sufficient detail to allow meaningful analysis. Therefore, Genesis requests the Committee order Staff to include only those projects that meet the criteria set forth in our Opening Brief and to include only those plans that are formally adopted and include sufficient information about future projects to allow meaningful analysis.

VI. The Committee should reject Staff’s contention that the issues are too complex for it to complete its analysis of the GSEP in time to support ARRA funding.

While Genesis has attempted to work with Staff to resolve these issues, Staff has been unwilling to engage in meaningful dialogue about what standards should be applied to the GSEP beyond directing Genesis to switch to dry cooling. As described in our Opening Brief, the application of the Accounting Surface and the need to do a cumulative impact analysis are issues for every renewable project seeking ARRA funding. Either the Accounting Surface applies or it does not. The Committee can answer that question now for all projects.

With respect to cumulative impact analysis for groundwater, all of projects are using groundwater in some way or another and Staff will be required to perform a cumulative impact evaluation for groundwater for each one. It is not how much water that is being used that drives the need to perform the analysis. With respect to cumulative groundwater modeling, the modeling must be performed whether the model input is a 300 acre feet/year or 1600 acre feet/year and the input to the model does not affect the effort required. In other words the level of effort required by Staff to perform a cumulative groundwater analysis is the same regardless of how much water is being used by a particular project.

With respect to application of the Commission’s 2003 IEPR Water Policy, we believe Staff can easily complete that analysis in reliance on the SWRCB letter and no longer needs to complete an alternative cooling analysis to demonstrate compliance.

It is unfair to single out Genesis as requiring too much time and effort to be completed in time to support ARRA funding. Such a result ignores the strides that Genesis has made in resolving other environmental issues through its site selection and in responding to over

250 data requests and full participation in over 7 public workshops and hearings in the past two months. Disagreement with Staff should not preclude Staff completing a timely analysis.

Genesis respectfully requests the Committee issue a Scoping Order as requested in our Opening Brief as modified by this Reply Brief and direct Staff to meet the deadlines outlined in the Committee Scheduling Order.

Dated: January 22, 2010

/original signed/

Scott A Galati
Counsel to Genesis Solar, LLC



Linda S. Adams
*Secretary for
Environmental Protection*

State Water Resources Control Board

Executive Office

Charles R. Hoppin, Chairman
1001 I Street • Sacramento, California 95814 • (916) 341-5603
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

January 20, 2010

Ms. Melissa Jones
Executive Director
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814-5512

Dear Ms. Jones:

STATE POLICIES FOR WATER QUALITY CONTROL AND THEIR APPLICABILITY TO POWER PLANT LICENSING

Thank you for your letter of November 23, 2009, in which you seek the State Water Resources Control Board's (State Water Board) assistance with applications for renewable energy projects currently pending before the California Energy Commission (Commission). As these projects would develop new sources of renewable energy and qualify for federal financial assistance, the Governor's Office and the Commission have placed a high priority on their timely review. To that end, I will ensure that State Water Board management staff is available to consult with Commission staff on water supply issues for these projects as needed.

State Water Board management staff will also coordinate with the management staff at the affected regional water quality control boards (regional water boards) on water quality issues to help ensure that the affected regional water boards continue to timely process the applicants' reports of waste discharge. In addition, my staff is available to discuss other methods for streamlining the Commission's review of these projects, including ensuring consistent approaches for regional water boards' adoption of waste discharge requirements, assessing appropriate waste discharge fees for regional water board oversight activities, and coordinating monitoring, inspection, and enforcement activities.

You have asked whether State Water Board policies support the use of supply water with a total dissolved solids (TDS) range of 1,000 to 3,000 mg/l for these projects, and, if so, which factors should be considered by the Commission in determining whether the use of such waters should be allowed for each project. State policy for water quality control does allow, under some circumstances, the use of supply water with TDS ranging from 1,000 to 3,000 mg/l to supply renewable energy projects. As discussed in greater detail below, the State Water Board's policies and state law identify multiple factors that should be considered when evaluating alternate sources of supply water for these projects.

Your questions relate to the interaction between certain provisions of State Water Board Resolution 75-58 ("Water Quality Control Policy on the Use and Disposal of Inland Waters Used for Powerplant Cooling") and State Water Board Resolution 88-63 ("Sources of Drinking

California Environmental Protection Agency

Water"). As official state policies for water quality control, State Water Board Resolutions 75-58 and 88-63 are binding on all state agencies unless the Legislature provides otherwise. (Wat. Code, § 13146.)

When it adopted State Water Board Resolution 75-58 in 1975, the State Water Board recognized that new power plants were being considered for non-coastal sites, and expressed a concern about the limited availability of inland waters for powerplant cooling. The board stated that Resolution 75-58's purpose is to "provide consistent statewide water quality principles and guidance for adoption of waste discharge requirements, and implementation actions for powerplants which depend upon inland waters for cooling." (State Water Board Resolution 75-58, p.1.) Further, the board anticipated that the policy "should be particularly useful in guiding planning of new power generating facilities so as to protect beneficial uses of the State's water resources and to keep the consumptive use of freshwater for powerplant cooling to that minimally essential for the welfare of the citizens of the State." (*Ibid.*)

The provisions in Resolution 75-58 that are most relevant to your questions about sources of water for the pending renewable energy projects are the following three "Principles:"

1. It is the Board's position that from a water quantity and quality standpoint the source of powerplant cooling water should come from the following sources in this order of priority depending on site specifics such as environmental, technical and economic feasibility consideration: (1) wastewater being discharged to the ocean, (2) ocean, (3) brackish water from natural sources or irrigation return flow, (4) inland wastewaters of low TDS, and (5) other inland waters.
2. Where the Board has jurisdiction, use of fresh inland waters for powerplant cooling will be approved by the Board only when it is demonstrated that the use of other water supply sources or other methods of cooling would be environmentally undesirable or economically unsound.
7. The State Board encourages water supply agencies and power generating utilities and agencies to study the feasibility of using wastewater for powerplant cooling. The State Board encourages the use of wastewater for powerplant cooling where it is appropriate. Furthermore, Section 25601(d) of the Warren-Alquist Energy Resources Conservation and Development Act directs the Commission to study, "expanded use of wastewater as cooling water and other advances in powerplant cooling" and Section 462 of the Waste Water Reuse Law directs the Department of Water Resources to "...conduct studies and investigations on the availability and quality of waste water and uses of reclaimed waste water for beneficial purposes including, but not limited to... and cooling for thermal electric powerplants."

(State Water Board Resolution 75-58, pp. 4-5.)

In State Water Board Resolution 88-63, the board determined that, with specified categorical exceptions, "[a]ll surface and ground waters of the State are considered to be suitable, or

potentially suitable, for municipal or domestic water supply” (State Water Board Resolution 88-63, p. 1.) The relevant categorical exceptions is where the water has TDS exceeding 3,000 mg/L and the water is not reasonably expected by regional boards to supply a public water system. (*Ibid.*)

More specifically, your questions relate to Resolution 75-58’s definitions of “brackish waters” and “fresh inland waters” and Resolution 88-63’s treatment of “sources of drinking water.” “Brackish waters” is defined by Resolution 75-58 as “waters with a salinity range of 1,000 to 30,000 mg/L and a chloride range of 250 to 12,000 mg/l.” (State Water Board Resolution 75-58, p. 2.) “Fresh inland waters” is defined by Resolution 75-58 as “those inland waters which are suitable for use as a source of domestic, municipal, or agricultural water supply and which provide habitat for fish and wildlife.” (*Ibid.*) As a general matter, that means “fresh inland waters” for purposes of Resolution 75-58 does not extend to groundwater, which typically does not provide fish or wildlife habitat. On the other hand, State Water Board Resolution 88-63 generally provides that all surface waters and ground waters with a TDS of 3,000 mg/L or less shall be considered to be suitable for municipal or domestic water supply.

The Commission’s primary issue revolves around whether brackish waters with a TDS of between 1,000 and 3,000 mg/L should be considered to be fresh inland waters in the context of Resolution 75-58’s Principle No. 2. The answer is typically yes for surface waters and no for ground waters. Due to the State Water Board’s subsequent adoption of Resolution 88-63, which establishes the threshold of 3,000 mg/L TDS for suitability, or potential suitability, for domestic or municipal water supply, surface waters that support fish and wildlife habitat and have TDS concentrations of 3,000 mg/L or less should be considered to be “fresh inland waters” for the purposes of Resolution 75-58’s Principle No. 2. As a result, such waters should only be used for these renewable energy projects upon a demonstration that the use of other water supplies or other methods of cooling would be “environmentally undesirable” or “economically unsound.” With respect to ground waters, they would not be considered “fresh inland waters” because they do not provide habitat for fish and wildlife.

Neither “environmentally undesirable” nor “economically unsound” is defined in Resolution 75-58. It appears that the State Water Board has not had occasion to formally interpret or apply either phrase since it adopted Resolution 75-58. If recycled water is available, and its use would not cause greater significant adverse effects on the environment than the use of fresh inland waters would cause, then it is unlikely that the State Water Board would find that the use of the recycled water is “environmentally undesirable.” Water Code section 13550, which was enacted in 1977, helps to inform how the phrase “economically unsound” should be applied. Section 13550 contains a legislative declaration that the use of potable¹ domestic water for nonpotable uses, including industrial use, is a waste or unreasonable use of the water if the State Water Board determines that, among other things, recycled water of an adequate quality is available at a cost that is comparable to, or less than, the cost of supplying the potable water. Therefore, if recycled water is available for these projects at roughly the same or lower cost, then the use of fresh inland waters should clearly be considered to be “economically unsound.”

In its 2003 Integrated Energy Policy Report, the Commission stated that it interprets “economically unsound” in this context as “economically or otherwise infeasible.” To the extent

¹ “Potable water” in Water Code section 13550 refers to both surface water and ground water.

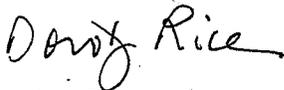
that the Commission determines that it is appropriate to require project applicants to incur substantially increased, but economically feasible, costs in order to use recycled water in lieu of fresh inland waters, such a result would not be compelled by the terms of Water Code section 13550. As the State Water Board has not yet defined "economically unsound," it is not possible to determine whether such a result would be required by Principle No. 2 of Resolution 75-58. Nonetheless, it would be consistent with Principle No. 7 of Resolution 75-58, which encourages the use of recycled water for powerplant cooling.

As you point out, Principle No. 1 of Resolution 75-58 lists brackish water as generally a higher priority for powerplant cooling than inland wastewaters of low TDS and other inland waters. This priority scheme is, however, explicitly dependent on site-specific considerations, including environmental considerations. One of the underlying bases for Resolution 75-58 is that "[t]he loss of inland waters through evaporation in powerplant cooling facilities may be considered an unreasonable use of inland waters when general shortages occur." (State Water Board Resolution 75-58, p. 3, Basis 4.) Thus, in a water short area with available recycled water, site-specific environmental considerations may dictate that the use of recycled water should take precedence over the use of brackish water.

Finally, the State Water Board understands that the Commission and other state and federal agencies are working on a longer-term plan for future renewable energy projects. The State Water Board would welcome the opportunity to assist with such a planning effort by identifying the existing and anticipated future sources of recycled water that may be available for future energy projects. Such a mapping approach may be used by the Commission and potential project applicants in siting future power plants in closer proximity to such sources of recycled water, thereby minimizing additional demands on the state's limited potable water supplies.

I hope that this answers the questions you have posed. Please do not hesitate to contact Jonathan Bishop, State Water Board Chief Deputy Director, at (916) 341-5820 to discuss these or any other issues.

Sincerely,



Dorothy Rice
Executive Director

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



For legal
COPY

November 23, 2009

Dorothy Rice, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Ms. Rice:

The Energy Commission is processing a number of applications for environmental review and licensing of renewable energy projects. These applications are for solar thermal facilities, each proposed to provide several hundred megawatts (MW) of capacity. Many of the project developers plan to seek financial assistance from the federal government under the American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA imposes construction start deadlines (i.e., December 31, 2010 for grants in lieu of investment tax credits, and September 30, 2011 for federal loan guarantees) for this assistance. Pursuant to both the Governor's Executive Order S-14-08 and the recent Memorandum of Understanding between the State of California and the U.S. Department of the Interior, the Energy Commission staff is working to review each application in time for an Energy Commission decision prior to these deadlines. The Governor's Office has placed the highest priority on the timely completion of the Commission's review of these projects.

The Energy Commission has received license applications for a large number of solar thermal energy projects in the desert regions of California. As a part of our licensing process we work with the Regional Water Quality Control Board staff to ensure applicants design their projects to comply with regulatory requirements and protect water quality. Often times these designs require issuance of permit requirements that must be developed and incorporated in our environmental analysis of a project. In order to maintain the schedule that has been established to satisfy ARRA funding requirements, we anticipate the Lahontan and Colorado Desert Regional Water Quality Control Boards' workload will be significantly impacted. We are interested in discussing if and how the water boards can assist in meeting these schedules through prioritization and/or assistance from us in developing project permit requirements.

Another issue we face in reviewing these applications is water quality. All of the projects will be using water with total dissolved solids (TDS) levels ranging from 1,000 to 3,000 milligrams per liter (mg/L). In many cases, this is the highest quality water available. The water would be used for industrial purposes such as mirror washing, steam generation, and would also be used on a temporary basis for dust control in grading sites that

encompass 200 to 8,000 acres. In addition, two of the projects propose to use an annual average of 1,600 to more than 2,000 acre feet per year for power plant turbine cooling. Although Energy Commission staff has worked with the appropriate Regional Water Quality Control Boards to determine whether use of high TDS water was acceptable in past projects, this process has typically involved an amount of time that would be inconsistent with the schedules established for the renewable projects we are currently reviewing.

Therefore, we are also asking for your assistance in evaluating the proposed water supplies for these projects. We are particularly interested in understanding how State Water Resources Control Board (Board) Resolutions Number 75-58 (Use and Disposal of Inland Waters Used for Powerplant Cooling) and Number 88-63 (Sources of Drinking Water) should be applied in these cases. As you may be aware, in the 2003 Integrated Energy Policy Report, the Energy Commission, in consideration of Resolution 75-58, stated that it would approve the use of fresh water for cooling in power plants only where alternative water supply sources and alternative cooling technologies are shown to be environmentally undesirable or economically unsound. Therefore, one of the issues we must address in these cases is whether water with TDS levels ranging from 1,000 to 3,000 mg/L is "fresh." In making that determination, we turn to your policies for guidance, but seek further clarification from you.

Resolution 88-63 states that groundwater should be designated as suitable or potentially suitable for domestic water supply unless (among other factors) the TDS levels exceed 3,000 mg/L. Resolution 75-58, on the other hand, identifies "brackish water" as that with TDS levels $\geq 1,000$ mg/L, and lists brackish water as the third priority for use of water for cooling. That Resolution also states that the use of inland waters for cooling may be considered an unreasonable use of inland waters when general shortages occur and that, where the Board has jurisdiction, such use will only be allowed when the use of other sources or cooling methods are environmentally undesirable or economically unsound.

In light of these factors, it is essential that we understand your position and interpretation regarding Board policies as we answer the following questions:

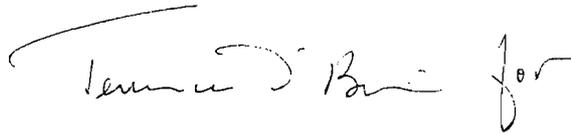
- 1) Do the Board policies support the use of water with a TDS range of 1,000 – 3,000 mg/L for mirror washing, steam production, dust control, and for power plant cooling?
- 2) Does the answer to question 1 depend on the location and the designated beneficial uses of the water supply or the amount of water proposed for use?
 - If so, how should we use these factors in determining the acceptability of the use?
 - Are there additional factors the Energy Commission should consider?

Dorothy Rice, Executive Director
November 23, 2009
Page 3

We seek prompt resolution of these issues to complete a timely review of these projects. We invite you and your staff to attend and participate in publicly noticed issue-resolution workshops that will be held during the months of November, December, and January. In addition, any written response you can provide that addresses our concerns would be of great value. We are also available to meet with you and your staff at your convenience to discuss these issues.

I deeply appreciate your consideration of our request for assistance. Your participation and input will greatly help the Energy Commission in its timely review of these high-priority renewable energy projects. If you have specific questions about the projects or the siting process, please contact Matthew Layton, Engineering Office Manager at (916) 654-3868. I look forward to your response and hope Board staff will participate in our proceedings.

Very truly yours,

A handwritten signature in black ink, appearing to read "Melissa Jones". The signature is fluid and cursive, with a long horizontal stroke at the beginning and a distinct "J" and "S" in the middle.

MELISSA JONES
Executive Director

cc: Jonathan Bishop, Deputy Director
Philip Wyels, Assistant Chief Counsel
Michael Picker, Office of the Governor



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

**APPLICATION FOR CERTIFICATION FOR THE
GENESIS SOLAR ENERGY PROJECT**

Docket No. 09-AFC-8

**PROOF OF SERVICE
(Revised 1/04/10)**

APPLICANT

Ryan O'Keefe, Vice President
Genesis Solar LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Ryan.okeefe@nexteraenergy.com

Scott Busa/Project Director
Meg Russel/Project Manager
Duane McCloud/Lead Engineer
NextEra Energy
700 Universe Boulevard
Juno Beach, FL 33408
Scott.Busa@nexteraenergy.com
Meg.Russell@nexteraenergy.com
Duane.mccloud@nexteraenergy.com

Mike Pappalardo
Permitting Manager
3368 Videra Drive
Eugene, OR 97405
mike.pappalardo@nexteraenergy.com

Diane Fellman/Director
West Region
Regulatory Affairs
234 Van Ness Avenue
San Francisco, CA 94102
Diane.fellman@nexteraenergy.com

APPLICANT'S CONSULTANTS

Tricia Bernhardt/Project Manager
Tetra Tech, EC
143 Union Boulevard, Ste 1010
Lakewood, CO 80228
Tricia.bernhardt@tteci.com

Christo Nitoff, Project Engineer
Worley Parsons
2330 East Bidwell Street, Ste.150
Folsom, CA 95630
Christo.Nitoff@Worleyparsons.com

COUNSEL FOR APPLICANT

Scott Galati
Galati & Blek, LLP
455 Capitol Mall, Ste. 350
Sacramento, CA 95814
sgalati@gb-llp.com

INTERESTED AGENCIES

California-ISO
e-recipient@caiso.com

Allison Shaffer, Project Manager
Bureau of Land Management
Palm Springs South Coast
Field Office
1201 Bird Center Drive
Palm Springs, CA 92262
Allison_Shaffer@blm.gov

INTERVENORS

Tanya A. Gulesserian,*^{Loulena}
A. Miles, Marc D. Joseph
Adams Broadwell Joesph &
Cardoza
601 Gateway Boulevard,
Ste 1000
South San Francisco, CA 94080
tgulesserian@adamsbroadwell.com
lmiles@adamsbroadwell.com

Michael E. Boyd, President
Californians for Renewable
Energy, Inc. (CARE)
5439 Soquel Drive
Soquel, CA 95073-2659
michaelboyd@sbcglobal.net

Other

Alfredo Figueroa
424 North Carlton
Blythe, CA 92225
LaCunaDeAtzlan@aol.com

ENERGY COMMISSION

JULIA LEVIN
Commissioner and Presiding
Member
jlevin@energy.state.ca.us

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

Kenneth Celli
Hearing Officer
kcelli@energy.state.ca.us

Mike Monasmith
Siting Project Manager
mmonasmi@energy.state.ca.us

Caryn Holmes
Staff Counsel
cholmes@energy.state.ca.us

Robin Mayer
Staff Counsel
rmayer@energy.state.ca.us

Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Ashley Y. Garner, declare that on January 22, 2010, I served and filed copies of the attached, **GENESIS SOLAR, LLC REPLY BRIEF IN SUPPORT OF COMMITTEE SCOPING ORDER**. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:
[\[http://www.energy.ca.gov/sitingcases/genesis_solar\]](http://www.energy.ca.gov/sitingcases/genesis_solar)

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

sent electronically to all email addresses on the Proof of Service list;

by personal delivery or by depositing in the United States mail at Sacramento, California with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. **09-AFC-8**
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.

// Original Signed //

Ashley Y. Garner